

DEVELOPER’S AGREEMENT
ACAH – EVERGREEN VISTA ADDITION NO. 1, LOT 5

THIS DEVELOPER’S AGREEMENT (“Agreement”) is made and entered into this ___day of November 2024, by and between the City of Valdez, Alaska (“City”) and Alaska Corporation for Affordable Housing (“Developer”). City and Developer are sometimes herein referred to individually as a party or together as the parties.

WHEREAS, the City of Valdez Planning and Zoning Commission has approved an Conditional Use Permit No. 24-03 for the development of low-income housing at 700 West Clark Street legally described as Evergreen Vista Addition No. 1, Lot 5 according to Plat No. 81-4 (Exhibit A) , Valdez Recording District; and

WHEREAS, the Developer desires to improve all or a portion of the above-described Property and has been awarded a Housing Land Development Grant subject to the terms of this Agreement and completion of the improvements set forth herein; and

WHEREAS, the City desires to create additional new residential dwelling units with the City; and

WHEREAS, the City desires to assure uniform compliance with plan specifications, implementation of the City’s subdivision and infrastructure requirements, policies, and workmanlike standards of the City;

NOW, THEREFORE, it is agreed as follows:

This Agreement has been executed in two (2) original counterparts by City and Developer.

Any notice that is permitted or required under this Agreement shall be given in writing to a party in person, or by first class mail or by Federal Express or UPS, to the address below:

DEVELOPER

Alaska Corporation for
Affordable Housing
P.O. BOX 101020
Anchorage, AK 99510

CITY

BOX 307
260 Airport Road
Valdez, AK 99686

With a Copy to:

Jake Staser, City Attorney
Brena, Bell and Walker, P.C.
810 N Street, STE 100
Anchorage, AK 99501

The real property which is subject of this Agreement (“Property”) is located in the City and the Valdez Recording District, is shown on Exhibit A, and is described as:

Evergreen Vista Addition No. 1, Lot 5 according to Plat No. 81-4, Valdez Recording District, Third Judicial District, Alaska.

ARTICLE I

GENERAL PROVISIONS

- 1.1 Application of Article. Unless this Agreement expressly provides otherwise, all provision of this article apply to every part of the Agreement.
- 1.2 Permits, Laws, and Taxes. The Developer shall acquire and maintain in good standing all permits, licenses, and other entitlements necessary to its performance under the Agreement and comply with all local, state, and federal laws.
- 1.3 Relationship of Parties. Neither by entering into this Agreement, nor by doing any act hereunder, may the Developer, or any contractor or subcontractor of the Developer be deemed an agent, employee, or partner of the City. The Developer and its contractors and subcontractors shall not represent themselves to be agents, employees, or partners of City, or otherwise associated with the City other than. The Developer shall notify all contractors and subcontractors of the provision of this Section. Notwithstanding the Developers agreement to install Improvements related to the Whalen Street project referenced herein, the parties stipulate and agree that the project is not, and shall not be deemed to be, a public construction project.
- 1.4 Engineer’s Relation to City. Any engineer retained by the Developer to perform work under this Agreement shall not be deemed an agent, employee, partner, or contractor of the City, or otherwise associated with the City.
- 1.5 Responsibility. The Developer and City shall each be solely responsible for the faithful performance of all terms, covenants, and conditions of this Agreement applicable to them, respectively, notwithstanding the delegation to another actual performance of any term, covenant, or condition thereof.
- 1.6 Allocation of Liability. To the fullest extent permitted by law, the Developer shall defend, indemnify, and hold the City harmless from any claim, action, or demand made or asserted against the City arising from any act, error, or omission related to this Agreement in whole or in part by Developer, its agent, employees, or contractors. The Developer is not required to defend, indemnify, or hold the City harmless for a claim of, or liability for the independent negligent acts, errors, or omissions of the City.
- 1.7 Disclaimer of Warranty. Notwithstanding this Agreement or any action taken by any person hereunder, neither the City nor any City officer, agent, or employee warrants or represents the fitness, suitability, or merchantability of any property, plan, design, material, workmanship, or structure for any purpose.
- 1.8 Non-Discrimination. In performing its obligations under this Agreement, the Developer shall not discriminate against any person on the basis of race, creed, color, national origin, sex, or marital status, or age.
- 1.9 Cost of Documents. All plans, reports, drawings, or other documents that this Agreement requires the Developer to provide the City shall be furnished at the Developer’s expense.

- 1.10 Time is of the Essence. Unless otherwise expressly provided herein, time is of the essence of each and every term, covenant, and condition of this Agreement: provided, however, that Developer shall be permitted extensions of time for the causes specified in Article 2.
- 1.11 Non-Waiver. The failure of either party at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of said party thereafter to enforce each and every provision hereof.
- 1.12 Construction Standards. Construction and Improvement standards set forth in Chapter 16 of the VMC are incorporated by reference herein as minimum construction standards for performance under this Agreement, except where this Agreement specifically provides otherwise; provided, however, that provisions in the Standard Specifications describing the relationships and responsibilities of parties to construction contracts do not apply herein to the extent that they conflict with any provisions of this Agreement.
- 1.13 Amendment. The parties may amend this Agreement only in writing, signed by authorized representatives of both parties, which shall be attached as an appendix hereto.
- 1.14 Jurisdiction-Choice of Law. Any civil action rising from this Agreement shall be brought in the trial courts of the State of Alaska in the Third Judicial District at Valdez. The law of the State of Alaska shall govern the rights and duties of parties under this Agreement.
- 1.15 Severability. Any provision of this Agreement that may be declared invalid or otherwise unenforceable by a court of competent jurisdiction shall be ineffective to the extent of such invalidity without invalidating the remaining provisions of this Agreement.
- 1.16 Integration. This instrument and any writings incorporated by reference herein embody the entire agreement of the parties. This Agreement shall supersede all previous communications, representations, or agreements, whether or written, between the parties hereto.
- 1.17 Definitions. In addition to terms defined elsewhere in this Agreement, the following definitions shall apply herein:
- A. "Acceptance" means a determination by the City that an improvement meets City construction standards contemplated herein, and does not refer to acceptance of a dedication effected in the platting process.
 - B. "City" for the purpose of administering this Agreement, means the City Manager of the City, or the City Manager's designee.
 - C. "Improvements" means all work which this Agreement requires the Developer to cause be performed by its contractor(s).
- 1.18 Limitations or Damages. Anything to the contrary set forth in this Agreement notwithstanding, in no event shall the City or Developer be liable under any provision of this Agreement for consequential, punitive, special, exemplary, or any other damages except for actual, compensatory damages actually incurred.

ARTICLE II

IMPROVEMENTS, CONSTRUCTION STANDARDS, AND PROCEDURES

- 2.1 Improvements. Developer shall cause the improvements identified in Exhibit B (“Improvements”) to be completed by December 31, 2026. The Improvements shall comply with all requirements set forth in the Findings and Conditions issued with Conditional Use Permit No. 24-03 (Exhibit C).
- 2.2 Prerequisites to Construction. The Developer shall not obtain permits for the construction of Improvements, or commence the construction of Improvements until the requirements of Sections 2.03 through 2.04 have been met.
- 2.3 Engineer.
- A. The Developer shall retain an independent, registered professional engineer under the laws of State of Alaska, to design and administer the construction of the Improvements, including preparing plans and specifications, inspecting, and controlling the quality of the work, and preparing as-built data. The engineer shall maintain in good standing professional liability insurance in accordance with City policy.
 - B. The Developer shall inform the City of the name and mailing address of the engineer the Developer has retained to perform duties described in Subsection A of this Section, and agrees that notice to the engineer at the address so specified regarding the performance of such duties shall constitute notice to the Developer. The Developer shall promptly inform the City of any change in engineer and/or in the information required under this Subsection.
- 2.4 Plans and Specifications.
- A. The Developer shall submit to the City, in such form as the City may reasonably specify, 100% complete plans and specifications pertaining to the construction of the Improvements. All such plans and specifications shall be submitted together before City review begins.
 - B. If the City requires soil tests or other tests pertaining to the design of Improvements, the Developer shall submit reports of the test results with the plans and specifications.
 - C. The City shall approve the plans and specifications, or indicate to the Developer how it may modify them to secure approval with three weeks after the submission of all plans and specifications for the Improvement.
 - D. All changes or modifications to the plans and specifications that the City previously approved also shall be subject to prior City approval.
- 2.5 General Standard of Workmanship.
- A. The Developer shall cause to be constructed all Improvements in substantial accordance with plans, specifications, and contracts approved by the City, and with the terms, covenants, and conditions of this Agreement. The Developer’s Contractor shall not incorporate any material or equipment into an Improvement unless the City has approved its use. Unless the City specifically agrees otherwise in writing, all materials, supplies, and equipment incorporated into an Improvement shall be new.
 - B. The Developer shall construct all facilities on the Property not otherwise subject this this Agreement in accordance with all applicable statutes, ordinances, and specifications.
- 2.6 Work in Rights-of-Way. The Developer shall comply with all ordinances and secure all necessary permits and authorizations pertaining to work in public rights of way. The Developer shall coordinate and supervise

the installation and construction of all utility Improvements, including those not otherwise covered by this Agreement, in a manner that will prevent delays in City construction or other damage to the City and that will permit the City to properly schedule work that it will perform.

- 2.7 Surveyor. All surveys required for the completion of Improvements under this Agreement shall be made by a person registered as a land surveyor under the laws of the State of Alaska.
- 2.8 Surveillance.
- A. The City may monitor the progress of the work and the Developer's compliance with this Agreement, and perform inspections or tests which it deems necessary to determine whether the work conforms to this Agreement: provided, that no invasive or other testing which damages the Improvements shall be conducted without notice to and the approval of the Developer, not to be unreasonably withheld or delayed, and provided further that if the test results do not reveal any defect in an Improvement, the City shall restore any damage caused by its testing at its sole cost and expense.
 - B. If the Developer fails to notify the City of inspections, tests, and construction progress in accordance with the terms of this Agreement, the City may require, at the Developer's expense, retesting, exposure of previous stages of construction, or any other steps which the City deems necessary to determine whether the work conforms to this Agreement.
 - C. Any monitoring, tests, or inspections that the City orders or performs pursuant to this Section are solely for the benefit of the City. The City does not undertake to test or inspect the work for the benefit of the Developer or any other person.
- 2.9 Stop Work Orders.
- A. If the Developer does fail to comply with this Agreement, the City may, after giving written notice to Developer, stop all further construction of Improvements by posting a stop work order at the site of the nonconforming construction and notifying the Developer of the order. For so long as the Developer or Lender has commenced and is proceeding with diligence to cure the failure to comply with this Agreement, the City will permit the construction of Improvements to continue.
 - B. A Stop Work Order shall remain in effect until the City approves:
 - 1. Arrangements made by the Developer to remedy the nonconformity; and
 - 2. Assurances by the Developer that future nonconformities will not occur.
 - C. The issuance of a stop work order under this Section is solely for the benefit of the City. The City does not undertake to supervise the work for the benefit of the Developer or any other person. No suspension of work under this Section shall be grounds for an action or claim against the City, or for an extension of time to perform the work.
 - D. The Developer shall include in all contracts for work to be performed, or materials to be used under this Agreement, the following provisions:

The City shall have the authority to inspect all work or materials under this Agreement, and to stop work in the event that the work performed under this Agreement fails to comply with any provisions set forth herein. In the event that a stop work order is issued by the City, the contractor shall immediately cease all work and await further instructions from the Developer.

2.10 Access. Through the project development period, the City shall have access to all parts of the Property necessary or convenient for monitoring the Developer’s performance, inspecting, surveying, testing, or performing any other work pursuant to this Agreement.

2.11 Maintenance.

A. The Developer is solely responsible for maintaining all Improvements on the Property including but not limited to sewer lines, water lines, hydrants, streets, and roads. The Developer expressly acknowledges that snow removal is the sole responsibility of the Developer.

2.12 Time.

A. All Improvements required by this Agreement shall be completed by December 31, 2026. However, before the expiration of this Agreement, the City may grant a one-time extension, up to one year in length, upon a showing of good cause by the Developer and provided such extension does not unreasonably impact adjacent properties or the general public.

B. If the Developer is delayed by an act or omission of the City not otherwise authorized under this Agreement, or by changes ordered in the work, labor, disputes, fire, delays in transportation, casualties, or other causes beyond the Developer’s control, or by any cause which the City in its reasonable discretion determines to be adequate to justify the delay, the designated City agent shall extend the time of completion of construction under this Agreement for a reasonable time, not exceeding the duration of the condition that caused the delay. No extension shall be granted unless the Developer gives notice in writing to the City within thirty (30) days after the occurrence of the cause for delay. In the case of a continuing delay, only one notice is required.

ARTICLE III
PROJECT COMPLETION AND RELEASE OF GRANT FUNDS

3.01 Release of Grant Funds. Upon issuance of Certificates of Occupancy for all dwelling units to be constructed as the Improvements, the City shall release \$125,000 in grant funds to Developer.

[SIGNATURES TO FOLLOW]

**ACAH
DEVELOPER**

BY: _____

DATE: _____

TITLE: _____

FEDERAL ID #: _____

Mailing Address

City, State, Zip Code

Signature of Company Secretary or Attest _____

Date: _____

**CITY OF VALDEZ, ALASKA
APPROVED:**

Dennis Fleming, Mayor

Date: _____

ATTEST:

Sheri L. Pierce, MMC, City Clerk

Date: _____

RECOMMENDED:

John Douglas, City Manager

Date: _____

**APPROVED AS TO FORM:
Brena, Bell & Walker, P.C.**

Jake W. Staser, City Attorney

Date: _____

